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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: NO. 09-42219-B-7

ROSENAU INVESTMENTS, INC. DCN: MPD-6

Debtor /

Date: January 5, 2010  
Time: 9:32 a.m.  
Place: Courtroom 33, Dept B  
501 I Street, 6th Floor  
Sacramento, CA 95814

MOTION FOR AUTHORIZATION (1) TO SELL THE DEBTOR'S INTEREST IN REAL  
PROPERTY DESCRIBED AS THE PEPPER TREE INN LOCATED AT 622 NORTH  
PALM CANYON DRIVE, PALM SPRINGS, CALIFORNIA APN 505-303-029 INCLUDING  
THE MOTEL/HOTEL BUSINESS RUN AT THAT LOCATION AND THE RELATED  
PERSONAL PROPERTY FREE AND CLEAR OF LIENS AND (2) TO PAY A REAL  
ESTATE COMMISSION, COSTS OF SALE AND LIENS OF RECORD

John Reger (hereafter "Reger"), the chapter 7 trustee in this case, submits the  
following for the court's consideration in connection with his motion for authorization (1) to  
sell the debtor's interest in real property described as The Pepper Tree Inn located at 622  
North Palm Canyon Drive, Palm Springs, California APN 505-303-029 including the  
motel/hotel business run at that location and the related personal property free and clear of  
liens for \$1,250,000.00 and (2) to pay a real estate commission of \$75,000.00 to

Architectural Properties, Inc. for the Seller and Premier Apartment Advisors, Inc. for the Buyer, to be split 50/50 between them, costs of sale and liens of record.

### **I. STATEMENT OF FACTS**

These proceedings were instituted when the debtor Rosenau Investments, Inc. filed a petition under the United States Bankruptcy Code on October 13, 2009. Reger was appointed the Chapter 7 trustee.

During the course of administering the estate Reger discovered one of the assets of this estate is the debtor's interest in real property described as The Pepper Tree Inn located at 622 North Palm Canyon Drive, Palm Springs, California APN 505-303-029 including the motel/hotel business run at that location and the related personal property. Reger wishes to sell this property to generate funds for the estate and requests authorization (1) to go forward and complete this sale and (2) to pay a real estate commission, costs of sale and liens of record.

Reger has accepted an offer from Prize Group, LLC and/or assigns (hereafter "Buyer") subject to court approval and potential overbid to buy the debtor's interest in real property described as The Pepper Tree Inn located at 622 North Palm Canyon Drive, Palm Springs, California APN 505-303-029 including the motel/hotel business run at that location and the related personal property for \$1,250,000.00. The offer is all cash, no financing contingency, and closing as soon as practicable after the court order approving the sale is filed. Reger understands the proposed Buyer is not related to the debtor in the instant bankruptcy estate. From the sales price deductions of (1) eight percent or \$100,000.00, as an estimate for the commission, closing costs and other miscellaneous fees, (2) approximately \$0.00 for deeds of trust recorded against the property, and (3) approximately \$20,650.00 for estimated pro rated real property taxes will be made. This leaves an estimated recovery for the estate of approximately \$1,129,350.00.

Reger believes this price is at or near the present maximum obtainable sale price for the real property. Failure to sell at this price and time may result in detriment to the estate, rather than gain. Delay may result in diminution in value of the property and potentially

1 increased holding costs.

2 Under the real estate sales contract and order approving employment of Architectural  
3 Properties, Inc. the commission to be paid is six percent of the sales price or \$75,000.00.  
4 Reger requests authorization for payment of a real estate commission to Architectural  
5 Properties, Inc. for the Seller and Premier Apartment Advisors, Inc. for the Buyer, to be split  
6 50/50 between them. The sales contract also requires payment of certain customary costs of  
7 sale and payment of liens of record. Reger requests authorization for payment of those  
8 items from the sales proceeds.

9 The motion requests the sale be free and clear of liens of record in favor of the  
10 County of Riverside, for real property taxes, under 11 U.S.C. §363(f)(3) because the sales  
11 price exceeds the amount of unpaid real property taxes. The motion requests the sale be  
12 free and clear of liens of record, to the extent they exist, in favor of Leanne F. Weber, in the  
13 amount of \$18,825.36 and in favor of Melvin and Virginia Hendrickson, in the amount of  
14 \$58,501.49. Those liens were potentially created by issuance of a Temporary Protective  
15 Order by the Shasta County Superior Court on September 14, 2009 under Code of Civil  
16 Procedure §486.10. Those liens were created within the 90 day preference avoidance  
17 period under 11 U.S.C. §547. This means they are in bona fide dispute and the sale can be  
18 made free and clear of these liens under 11 U.S.C. §363(f)(4). The motion reserves the right  
19 to request the sale be free and clear of any other liens that may be determined to exist  
20 against the real property, if allowed pursuant to the applicable section of 11 U.S.C. §363(f).

## 21 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

### 22 **A. THIS COURT HAS AUTHORITY TO AUTHORIZE THE SALE OF ASSETS** 23 **OUTSIDE THE ORDINARY COURSE OF BUSINESS UNDER 11 U.S.C. §363(b)(1).**

24 Title 11 U.S.C. §363(b)(1) provides:

25 "The trustee, after notice and a hearing, may use, sell, or lease,  
26 other than in the ordinary course of business, property of the  
27 estate." (11 U.S.C. §363(b)(1))

28 This court's power to authorize the proposed sale under 11 U.S.C. § 363(b) is to be

1 exercised in its discretion. *In re Lionel Corp.* 722 F.2d 1063, 1069 (2d Cir. 1983); *In re*  
2 *Coastal Cable T.V., Inc.* 24 B.R. 609, 611 (Bankr. 1st Cir. 1982), rev. on other grounds, 709  
3 F.2d 762 (1st Cir. 1983); *In re Baldwin United Corp.* 43 B.R. 888, 905 (Bankr. S.D. (Ohio  
4 1984); *In re Ancor Exploration Co.* 30 B.R. 803, 808 (Bankr. N.D. Okla. 1983).

5 In *Lionel*, *supra*, a standard was established against which to measure the court's  
6 judicial exercise of its discretionary powers to approve a sale of assets outside the ordinary  
7 course of business under 11 U.S.C. §363(b). The *Lionel* court held that for the court to  
8 exercise proper discretion, a good business reason must be shown. Further, the court stated  
9 the discretionary power was available to further the interests of the debtor, its creditors, and  
10 its equity security holders. *Id.* at 1071.

11 The *Lionel* decision was adopted by the Ninth Circuit Bankruptcy Appellate Panel in  
12 *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14 (Bankr. 9th Cir. 1988), which approved  
13 language that the trustee must demonstrate a good business reason for selling the property.

14 In this case Reger has sound business reasons for selling the property. He will be  
15 able to liquidate an asset and create a fund out of which creditors will be paid. The price  
16 being paid for the property is fair and reasonable. Selling now prevents further delay,  
17 possible decrease in property value and potential additional costs associated with continued  
18 holding of the property. Under these circumstances this court's approval of the proposed  
19 sale would be a sound exercise of its discretion.

20 **B. THIS COURT HAS AUTHORITY TO AUTHORIZE THE SALE BE MADE FREE**  
21 **AND CLEAR OF LIENS UNDER 11 U.S.C. §363(f).**

22 Title 11 U.S.C. §363(f) allows a sale free and clear of liens only if (1) permitted by  
23 non bankruptcy law, (2) the lien holders consent to such sale, (3) the proposed purchase  
24 price exceeds the total value of the liens against the property, (4) a good faith dispute  
25 concerning the validity of the liens exists, or (5) in a judicial proceeding the lien holders are  
26 compelled to accept a money satisfaction of their interest.

27 With respect to the estimated real property taxes owed to the County of Riverside of  
28 approximately \$20,650.00, the proposed sale satisfies the third condition of the statute

1 because the purchase price exceeds the total value of this lien and this lien will be paid with  
2 the sale proceeds.

3 With respect to the liens of record, to the extent they exist, in favor of Leanne F.  
4 Weber, in the amount of \$18,825.36 and in favor of Melvin and Virginia Hendrickson, in the  
5 amount of \$58,501.49, as disclosed by the debtor in its schedules, those liens were  
6 potentially created by issuance of a Temporary Protective Order by the Shasta County  
7 Superior Court on September 14, 2009 under Code of Civil Procedure §486.10 in a lawsuit  
8 filed by Ms. Weber and the Hendricksons against the debtor. Those liens, to the extent they  
9 were created, arose within the 90 day preference avoidance period under 11 U.S.C. §547.  
10 This means they are in bona fide dispute because Reger has the ability to have them set  
11 aside. Consequently, the sale can be made free and clear of these two liens under 11  
12 U.S.C. §363(f)(4).

13 There are presently no other liens known to Reger, but Reger reserves the right to  
14 request the sale be free and clear of any other liens that may be determined to exist against  
15 the real property, if allowed pursuant to the applicable section of 11 U.S.C. §363(f).

### 16 **III. CONCLUSION**

17 For all the reasons set forth above Reger respectfully requests this court enter an  
18 order authorizing the following relief:

19 1. Authorization for Reger to sell the debtor's interest in real property described  
20 as The Pepper Tree Inn located at 622 North Palm Canyon Drive, Palm Springs, California  
21 APN 505-303-029 including the motel/hotel business run at that location and the related  
22 personal property for \$1,250,000.00 free and clear of liens to Prize Group, LLC and/or  
23 assigns for \$1,250,000.00 without further order of this court and to sign all documents  
24 necessary to accomplish this sale, or to any other higher bidder at the sale.

25 2. Approval of an overbidding procedure for the property in minimum increments  
26 of \$5,000.00, or any other amount approved by the court at the hearing. All persons wishing  
27 to bid must provide Reger no later than 24 hours prior to the hearing, \$50,000.00 in cash,  
28 cashier's check or certified funds plus proof of financial ability to close the sale. The winning

bidder's \$50,000.00 will be non refundable. If the sale is completed by the winning bidder the \$50,000.00 will be a credit towards the purchase price. If the winning bidder does not complete the sale the \$50,000.00 is forfeited to the estate. The winning bidder must purchase the property under the same terms and conditions as Prize Group, LLC and/or assigns are purchasing the property, other than payment of the winning bid as the purchase price.

3. Approval for Reger to pay the following items from the sales proceeds: (1) \$75,000.00 for a six percent sales commission payable to Architectural Properties, Inc. , for Seller, and Premier Apartment Advisors, for Buyer, to be split 50/50, (2) closing costs and other miscellaneous fees and costs normally required of the seller of real property and as required under the real estate sales contract in the estimated amount of two percent of the sales price or approximately \$25,000.00, (3) the amount necessary to satisfy pro rated real property taxes in the approximate amount of \$20,650.00, (4) the amount necessary to satisfy any other valid and owing liens of record.

4. Confirmation the sale will be made free and clear of the real property tax liens of Riverside County under 11 U.S.C. §363(f)(3) because these liens are being paid in full from the sale proceeds.

5. Confirmation the sale will be made free and clear of the lien of Leanne F. Weber under 11 U.S.C. §363(f)(4) because this lien is subject to being set aside by Reger and is in good faith dispute.

6. Confirmation the sale will be made free and clear of the lien of Melvin Hendrickson and Virginia Hendrickson under 11 U.S.C. §363(f)(4) because this lien is subject to being set aside by Reger and is in good faith dispute.

7 All further relief the court believes is just and proper in this case.

Date: December 8, 2009

/s/ Michael P. Dacquisto  
MICHAEL P. DACQUISTO,  
Attorney for Chapter 7 Trustee,  
JOHN REGER